IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

(1) D.B.CIVIL SPECIAL APPEAL(WRIT) NO.401/2003

The Union of India
Vs.
Trustees of Major Maharaj Harisingh Benefit of Defence Services Personnel Charitable Trust & Ors.

(2) D.B.CIVIL SPECIAL APPEAL(WRIT) NO.673/2004

The State of Rajasthan & Anr.
Vs.
Trustees of Major Maharaj Harisingh Benefit of Defence Services Personnel Charitable Trust & Anr.

D.B.CIVIL SPECIAL APPEALS UNDER SECTION 18 OF THE RAJASTHAN HIGH COURT ORDINANCES, 1949 AGAINST THE JUDGMENT DATED 25.2.2003 PASSED BY HON'BLE MR.JUSTICE RAJESH BALIA IN S.B.CIVIL WRIT PETITION NO.2725/1993.

DATE OF JUDGMENT: 25th, APRIL,2005

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE MANAK MOHTA

Mr.A.Sharan,Addl. Solicitor General)
Mr.Vineet Mathur, Asistant Solicitor General) for Union of India

Mr.N.M.Lodha, Addl.Advocate General, for the State

Mr.L.R.Mehta)
Mr.R.K.Purohit) for the respondents

REPORTABLE/-

BY THE COURT:(**PER HON'BLE MATHUR J.**)

1. These two special appeals separately preferred, one by Union of India and another by the State of Rajasthan are

directed against the judgment of the learned Single Judge setting aside the order Annexure-12 dated 7th May, 1993 and the Gazette Notification Annexure-13 of the same date issued by the competent authority (Collector, Jodhpur) under Section 7 of the Requisitioning & Acquisition of Immovable Properties Act, 1952 (hereinafter referred to as the Act of 1952) for the acquisition of requisitioned property for defence purposes.

2. The salient facts in short as emerged from the pleadings are as follows:-

The former ruler of the State of Jodhpur Maharaja Shri Gaj Singh created a Trust of a land in South of Umaid Bhawan Palace ad measuring about 1790000 Sq. Yards in the name of the writ petitioner respondent Major ***Maharaja Hari Singh Benefit of Defence Services Personnel Charitable Trust*** (hereinafter referred to as the Trust).

REQUISITION UNDER DEFENCE OF INDIA ACT:

3. The Defence Ministry required about 645 Acres of land for the purpose of developing the Army Cantonment consisting of Khasra No.426, 296, 297, 632, 632/1 & 632/4. It appears that in this connection the Army authorities contacted the Trust as well

as the Collector, Jodhpur which is evident from the some of the correspondences on record. The respondent Trust vide letter dated 9th January, 1973 conveyed its willingness to dispose of the subject land for defence purposes, which reads as follows:-

"D.O.NO.PS/85/73

M.JASWANT SINGH
PRIVATE SECRETARY

UMAID BHAWAN
JODHPUR
JAN:9, 1973

Thank you for your D.O. No.RJ/321/ACQ/57/E4A of 29th Dec.

In this connection I have had a meeting with Maj Gen. RF Khambatta PVSM. I would like to clarify a few things. Firstly, there is some variance between the map supplied by you and the position of land held by the Trust, on ground. I am, therefore, enclosing a map of the Trust property, which has been marked in black.

So far as the "No Objection" certificate from the Trust in concerned, as personally explained to Gen. Khambatta, the Trustees are shortly going to meet and pass a resolution to that effect. In this respect also, I think, there is some misunderstanding. If any impression has been given by the Collector that "litigation is under way" as mentioned in your letter, the impression is unfounded. The Trust does not intend filing any litigation. Further, the title of the land in question is not disputed at all. Some queries have been raised about what the type of land is. These are being dealt with routinely. Other than this, there is no dispute of litigation.

As mentioned earlier, the Trustees have, in principle, already accepted that the land be disposed to the Defence authorities subject.

(a) To any discrepancies of the measurements etc. being mutually sorted out; and

(b) if it is accepted that the land be acquired at the urban rates applicable for that area. There being no doubt that the land in question is urban in character. Further clarification, if necessary can be furnished.

I am taking liberty to endorsing a copy of this letter to HQ 12 Infantry Div. For their information. On receipt of your reply, necessary action will immediately be taken to provide you as also the Collector with "No Objection" certificate.

Sd/-
(JASWANT SINGH)"

4. There is another communication of 12th January, 1973 issuing "No Objection" certificate, which reads as follows:-

"K JASWANT SINGH No P/S85/73/17
SECRETARY UMAIDBHAWAN PALACE
MAJOR MAHARAJ HARISINGH JODHPUR RAJASTHAN
BENEFIT OF DEFENCE SERVICES January, 12-1973
PERSONNAL CHARITABLE TRUST

HQ 12 Infantry Div(A)
C/S 56 APO

SALE OF LAND ATTACHED TO UMAID BHAWAN JODHPUR BELONGING TO MAJOR MAHARAJ HARISINGH UMAID BHAWAN BENEFIT OF DEFENCE SERVICES PERSONNEL CHARITABLE TRUST.

Dear Sir,

With reference to the verbal discussion that we have been having on the subject, I am enclosing the necessary "No objection certificate in respect of our trust land. May I highlight here that the "No objection" certificate is subject to

(a) Discrepancies of the actual measurement of the land being mutually settled; and

(b) The rates payable as compensation to the Trust

are at the applicable urban rates.

Please acknowledge receipt of the certificate and advice about further course of action to be taken by us.

Yours faithfully
Sd/-
JASWANT SINGH
SECRETARY"

5. The Central Government proceeded for requisition of the land in accordance with Section 23 of the Defence of India Act, 1971 (hereinafter referred to as the Act of 1971). Inquiries were made to satisfy, if the land or part thereof was not being used exclusively for religious purpose by the public. The Tehsildar Tehsildar made necessary inquiries and issued a certificate in February, 1973. The defence authorities and the trustees with the assistance of Collector, Jodhpur negotiated for the price of the land. It appears from the application filed by the Trust for the award of compensation that as a result of mutual negotiations the sale price was finalized for Rs.2.05 per Sq. Yard. As the defence was in urgent need of the land, in accordance with the provisions of Section 23(1) of the Defence of India Act, 1971 the President sanctioned requisitioning of 465 Acres of private land in Village Digari and Jodhpur bearing Khasra No.s 426, 296, 297, 632, 632/1 and 632/4. The sanction was also accorded to the acquisition of the aforesaid land at approximate cost of Rs.6.45 Lakhs. It was made clear that requisition

compensation will be made till acquisition is completed. With the said notification the land vested in Army on 6.5.76 and the possession was taken over by the Union of India on 1st July, 1976. Thereafter, a well planned cantonment has come up on the requisitioned land. Presently the new Corps Head Quarter Unit etc. are located on the land.

DIVERSION – STATE OR PRIVATE PROPERTY.(1975-89):-

6. At this stage it is relevant to refer the proceedings under the State Act and the litigation pertaining to subject land which delayed the award of compensation. The Collector, Jodhpur issued a notice dated 5.4.75 under the Rajasthan Land Reforms and Acquisition of Land Owners Estate Act, 1963(hereinafter referred to as the Act of 1964) requiring Maharaja Shri Gaj Sing to hand over possession of the land mentioned in the schedule annexed to the said notice including Khasra No.426 of Umaid Bhawan Palace. The notice was challenged by Maharaja Gaj Singh by filing a writ petition in the High Court. By an interim order dated 7.5.75 the State was restrained from taking any action under the Act of 1964. The stay was modified by order dated 30.9.1975. The Collector, Jodhpur issued a fresh notice dated 17.10.75 under the Act of 1964 requiring Maharaja Gaj Singh to hand over possession of the properties mentioned in the

notice dated 5.4.75, which were not covered by the modified stay order dated 30th September, 1975. Thus, a second writ petition was filed by Maharaja Gaj Singh challenging the notice dated 17.10.75. The Trust also filed a writ petition challenging the notice of the Collector dated 5.4.75 and 17.10.75. The Collector, Jodhpur took possession over the land declaring that the land measuring 296.20 Acre forming part of Khasra No.426 had vested in the State under the provisions of the Act of 1964. The Collector also claimed that the land deemed to have been acquired by the State w.e.f. 1.9.64 under the Act of 1964. He also recommended for issuing of no objection certificate for transfer of the land measuring 645 Acres (including 296.20 Acres of Khasra No.426) to the Ministry of Defence. The Sub Divisional Officer, Jodhpur resumed possession of the land measuring 296.20 Acres of Khasra No.426 on 8.12.75 by beat of drum and by pasting a notice in pursuance of the above direction of the Collector. On 1.7.76 the subject land was transferred to the defence authorities and the possession was handed over. A contempt petition was filed complaining that irrespective of interim order, Collector transferred subject land to Defence by Notification dated 6th May, 1976. On a statement made by the learned Government Advocate to the effect that the Trust may file a claim for compensation in respect to the subject land in accordance with law, the contempt notice was discharged..

Accordingly compensation petition was filed under Section 24 of the Act of 1971 in the year 1978. The Trust claimed compensation as follows:-

> "(a) Value of the land admeasuring 14,33,608 Sq. Yards @ Rs 6/- per Sq. Yard amounting to Rs.86,01,648/-
>
> (b) Interest on the amount of compensation @ 6% from the date of possession till the date of award may kindly be awarded to the applicant
>
> (c) Future interest on the amount of compensation from the date of award till the date of realization of the compensation may also be awarded to the applicant."

However, the claim petition could not proceed because of the pendency of the writ petition. The controversy was concluded by the decision of the Supreme Court rendered in Adhunik Grah Nirman Sahakari Samiti Ltd. etc. vs. State of Raj. & Anr. reported in AIR 1989 SC page 867. It was held therein that the subject land was not liable to acquisition under the Act of 1964 as it was excluded from the definition of land and the property falls within the ambit of the property excluded from the definition of land. The said finding was based on appreciation of material on record that the subject land was within the boundaries of Umaid Bhawan Palace, which is the private property in accordance with the inventory prepared and approved by the Government of India. It would be convenient to extract the finding of the Apex Court as follows:-

> "In view of these circumstances therefore so far as the land in dispute i.e. Khasra Nos. 421 and 426 is concerned the admission made by the State and which was also clear from various documents which have been considered by the High Court in their judgments in these petitions clearly show that these lands were within the boundaries of the Umaid Bhawan Palace which is the private property in accordance with the inventory prepared and approved by Government of India and therefore which will not fall within the ambit of the definition of the 'land' as defined in Section 2F and thus will not fall within the ambit of the 'estate' which could vest under the provisions of this Section."

NEGOTIATION FOR PAYMENT OF COMPENSATION:-

The trustees resumed negotiation with the Central Government to arrive at the agreed figure of compensation for requisitioning of the land for the period 1976-81, 1981-86 and 1986-91. The proceedings of the meeting in the office of the Assistant Defence Estate Officer, Jodhpur on 24.8.90 regarding negotiating the quantum of recurring compensation payable to the persons interested in respect of requisitioned land at Jodhpur has been placed on record as Annexure-6. As the possession was taken over by the defence in July, 1976 and as per the Act of 1952 the recurring compensation was required to be redetermined after every five years. Thus, the Collector offered following rate of recurring compensation vide Annexure-7 dated 21.6.97:-

> "A. From 1976 to 1981- @ 50 pisa per sq. yard

per year.

B. From 1981 to 1986- @ 75 pisa per sq. yard per year.

C. From 1986 to 1991- @ 1.50 pisa per sq. yard per year."

The amount of Rs.1,97,12,110/- was paid to the Trust. The receipt dated 22nd January, 1992 has been placed on record as Annexure-9 which reads as follows:-

> "Received with thanks a sum of rupees 1,97,12,110/- (Rupees One Crore ninety Seven Lack Twelve thousand one hundred and Ten only) through P.D. Accounts with the State Bank of India, Kutchari Branch Jodhpur vide Cheque No.A/5 793620 dated 2.1.1992 from the Collector, Jodhpur **towards recurring compensation in respect of this Trust's land measuring 296.20 acres**."

ACQUISITION OF REQUISITIONED LAND UNDER ACT OF 1952:-

7. It is further relevant to state that by an Amendment Act No.44 of 1977 on expiry of the Defence of India Act,1971 on 26th September, 1977 the properties which were requisitioned under Section 23 of the Act, provided that the said properties be deemed to have been requisitioned under the provisions of Requisitioning and Acquisition of Immovable Properties Act, 1952. In view of the above the provisions of Requisitioning &

Acquisition of Immovable Properties Act, 1952 were made applicable to the subject property. Thus, the proceedings were taken to acquire subject requisitioned land under the Act of 1952.

8. The Collector, Jodhpur being the competent authority under the Act of 1952 issued a notice dated 26.2.93 to the respondent Trust under Section 7(1) to show cause as to why the land in question be not acquired for public purposes. In reply to the notice the respondent inter alia raised objection to the effect that the notice does not disclose the public purpose for which the property is sought to be acquired. The authority of the Collector to issue notice was also questioned. It was pleaded that the State could not be treated as a party interested to join the issue of acquisition and lastly claimed personal hearing. A prayer was made to immediately withdraw or cancel the acquisition notice. The Collector considering the objections held that the land under acquisition was requisitioned under Section 23 of the Act of 1971. The possession of the land vested in the Central Government w.e.f. 1st July, 1976 in view of the provisions of Section 23 of the Act of 1971. During the period of requisition entire cantonment has been developed by raising number of constructions on the subject property at the expenses of the Central Government. The public purpose was known to the

objector even at the initial stage. The objector was in full knowledge of the public purpose for which the land was sought to be acquired. The objector has also received recurring compensation of Rs.1,97,12,110/-. There was some litigation with respect to the subject Trust properties in which the Ministry of Defence was also a party and the same culminated with the decision of the Supreme Court. In view of the finding, the competent authority (Collector, Jodhpur) rejected the objections and issued an acquisition notice dated 7.5.93 in Form J.

CHALLENGE TO ACQUISITION PROCEEDINGS:-

9. The respondent Trust challenged the notice dated 26.2.93 Annexure-10 and the acquisition notice dated 7.5.93 by way of a writ petition under Article 226 of the Constitution of India inter alia on the ground that it has been issued in contravention of the provisions of the Act of 1952 inasmuch as no opportunity of personal hearing was afforded which is mandatory under the provisions of Section 7(1) of the Act of 1952. The learned Single Judge held that under Sub-section (1) of Section 7 of the Act of 1952 mere submission of reply to show cause notice and its consideration without giving opportunity of hearing to parties interested is not envisaged. The Court further held that if the requirement of the statutes were to be fulfilled merely on

consideration of objections as may have been received by the competent authority, in response to show cause notice and opportunity of being heard in person is not considered necessary, the expression and "***after giving the parties opportunity of being heard"*** in proviso to Section 7(1) shall be rendered otiose. Thus, the learned Single Judge having found the order of the competent authority Annexure-12 dated 7.5.93 passed in gross violation of the principles of natural justice inasmuch as that no personal hearing was given to the respondent Trust allowed the writ petition and quashed the Annexure-12 dated 7.5.93.

CONTENTIONS:-

10. Assailing the judgment of the learned Single Judge, it is contended by Mr.A.Sharan learned Addl. Solicitor General that a fair reading of Sub-section (1) of Section 7 of the Act of 1952 shows that it does not necessarily postulate of personal hearing. There is also no rule of natural justice that at every stage a person is entitled to personal hearing. The learned counsel referring to the theory of unnecessary formality argued that the learned Single Judge has not taken into account the indisputable fact which leads to the only conclusion that the subject requisitioned property has to be acquired. On the other hand

Mr.L.R.Mehta learned counsel appearing for the Trust has supported the judgment of the learned Single Judge.

11. In order to appreciate what was held by the learned Single Judge and to test the correctness of the rival submissions advanced before us, it is necessary to refer to the relevant statutory provisions.

D.I.R. ACT, 1971:-

12. His Excellency the President of India declared proclamation under Clause (1) of Article 352 of the Constitution considering that a grave emergency exists whereby the security of India is threatened by external aggression and in order to provide special measures to ensure the public safety and interest, the defence of India and civil defence and for the trial of certain offences and for matters connected therewith enacted the Act as a special measure in the name of Defence of India Act, 1971. Chapter V provides for requisitioning and acquisition of immovable properties. Section 23 & 24 of the Act reads as follows:-

> "23.***Requisitioning of immovable property***.-(1) Notwithstanding anything contained in any other law for the time being in force, if in the opinion of the Central Government or the State Government it is necessary or expedient so to do for securing the defence of India, civil defence, public safety, maintenance of public order or efficient conduct of

military operations, or for maintaining supplies and services essential to the life of the community, that Government may be order in writing requisition any immovable property and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning:

Provided that no property or part thereof which is exclusively used by the public for religious worship shall be requisitioned .

(2) The requisition shall be effected by an order in writing addressed to the person deemed by the Central Government or the State Government, as the case may be, to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.

(3) Whenever any property is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in that sub-section.

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24. Payment of compensation.- Whenever in pursuance of section 23, the Central Government or the State Government, as the case may be, requisitions any immovable property, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely:-

(i) the rent payable in respect of the property or if no rent is payable, the rent payable in respect of similar property in the locality;

(ii) if in consequence of the requisition of the property the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;

(iii) such sum or sums, if any, as may be found

> necessary to compensate the person interested for damage caused to the property on entry after requisition or during the period of requisition, other than normal wear and tear:
>
> Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government or the State Government as the case may be, may determine:
>
> Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination, and shall be determined in accordance with the decision of such arbitrator."

13. Section 23 empowers requisitioning of any immovable property which in the opinion of the Central Government is necessary for securing the Defence of India, civil defence, public safety, maintenance of public order of efficient conduct of military operations or for maintaining supply and services essential to the life of the common man. The property exclusively used by the public for religious worship has been excluded from requisition under proviso to sub-section (1). Section 24 provides for the payment of compensation. The Defence of India Act expired on 26th September, 1977 i.e. six

months after the date of revocation of proclamation of emergency issued on 3rd December, 1971. The properties requisitioned under the Act of 1971 continues to vest in the Central Government by virtue of Amendment Act of 1977. The Ministry of Defence considered it necessary to keep all the properties under requisitioning even after 26th September, 1977 for purpose connected with the defence of the country. As such Requisitioning & Acquisition of Immovable Properties Amendment Ordinance, 1977 was promulgated on 23rd September, 1977. The Ordinance amended the Requisitioning & Acquisition of Immovable Properties Act, 1952 to provide that such properties shall be deemed to have been requisitioned under the Act of 1952. Thus, after the decision of the Supreme Court in the year 1989, the proceedings for compensation resumed. At that stage it was felt that a formal proceeding is required to be initiated for the acquisition of the land requisitioned by the Central Government.

ACT OF 1952:-

14. The Requisitioning & Acquisition of Immovable Properties Act, 1952 was enacted to provide for the requisitioning and acquisition of immovable property for the purpose of the Union. Section 3 provides for the requisitioning of immovable

properties. In the instant case no proceedings was required to be initiated under Section 3 of the Act of 1952. Section 7 provides for the acquisition of the requisitioned properties. Section 7 reads as follows:-

> "***7.Power to acquire requisitioned property***.-(1) Where any property is subject to requisition, the Central Government may, if it is of opinion that it is necessary to acquire the property for a public purpose, at any time acquire such property by publishing in the Official Gazette a notice to the effect that the Central Government has decided to acquire the property in pursuance of this section:
>
> Provided that before issuing such notice, the Central Government shall call upon the owner of, or any other person who, in the opinion of the Central Government, may be interested in such property to show cause why the property should not be acquired, and after considering the cause, if any, shown by any person interested in the property and after giving the parties an opportunity of being heard, the Central Government may pass such orders as it deems fit.
>
> (2) Where a notice as aforesaid is published in the Official Gazette, the requisitioned property shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the Central Government free from all encumbrances and the period of requisition of such property shall end.
>
> (3) No property shall be acquired under this section except the following circumstances, namely:-
>
> (a) Where any works have, during the period of requisition, been constructed on, in or over, the property wholly or partially at the expense of the Central Government and the Government decides that the value of, or the right to use, such works should be secured or preserved for the purposes of Government, or

(b) where the cost of restoring the property to its condition at the time of its requisition would, in the determination of the Central Government, be excessive and the owner declines to accept release from requisition of the property without payment of compensation for so restoring the property.

(4) Any decision or determination of the Central Government under sub-section (3) shall be final and shall not be called in question in any Court.

(5) For the purposes of clause (a) of sub-section (3) "works" includes buildings, structures and improvements of every description."

15. Section 7 empowers the Central Government to acquire requisitioned property if it is in the opinion that it is necessary for public purpose. However, before publishing a notice under sub-section (1) of Section 7 a notice is required to be served on the person interest in such property to show cause why the property should not be acquired. The provision also casts a duty on the competent authority to pass an appropriate order for acquisition after giving an opportunity of being heard to the person interested. Sub-section (2) of Section 7 envisages that when a notice as provided under Sub-section (1) is published in the Official Gazette the requisitioned property shall on and from beginning of the day on which the notice is published, vests absolutely in the Central Government free from all encumbrances. It further provides that period of requisitioning shall end with the notification under Sub-section (1). Thus, the

object of issuing notice under Section 7(1) of the Act to the owner or any other person interested in the property is to afford an opportunity to show cause against the acquisition of requisitioned property. It is significant to notice that the objection to such acquisition has been confined to the circumstances provided under Sub-section (3). Thus, under Section 7 only such a property can be acquired on which during the period of requisition a construction has been raised from the funds of the Central Government and further such work is required to be preserved for the purpose of the Government. In other words if the property which has been requisitioned has not been utilized an objection can be raised to the effect that there remains no public purpose for the acquisition of the property. The another circumstance provided is that where the cost of restoring the property to its condition at the time of its requisition would, in the determination of the Central Government, be excessive and the owner declines to accept release from requisition of the property without payment of compensation for restoring the property. Thus, for acquiring land under Section 7 of the Act of 1952, there must be compliance of Section 7(3) i.e. there must be some improvements or construction of some building etc. on the property or when the authority was not in a position to pay compensation for such construction or when the claimant refuse to take possession

thereof.

16. Section 8 provides for principles and method of determination of compensation. The provision reads as follows:-

> ***"8.Principles and method of determining compensation.-***(1) When any property is requisitioned or acquired under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say,-
>
> (a) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement;
>
> (b) where no such agreement can be reached, the Central Government shall appoint as arbitrator a person who is, or has been, or is qualified for appointment as, a Judge of a High Court;
>
> (c) the Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned or acquired to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the same purpose;
>
> (d) at the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinion is a fair amount of compensation.
>
> (e) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specifying the person or persons to whom such compensation shall be paid; and in making the award, he shall have regard to the circumstances of each case and the provisions of sub-section (2) and (3), so far as they are applicable;

(f) where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons;

(g) nothing in the Arbitration Act, 1940 shall apply to arbitrations under this section.

(2) The amount of compensation payable for the requisitioning of any property shall, subject to the provisions of sub-section (2A) and (2B), consist of-

(a) a recurring payment, in respect of the period of requisition, of a sum equal to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease for that period; and

(b) such sum or sums, if any, as may be found necessary to compensate the person interested for all or any of the following matters, namely:-

(i) pecuniary loss due to requisitioning;

(ii) expenses on account of vacating the requisitioned premises;

(iii) expenses on account of reoccupying the premises upon release from requisition; and

(iv) damages(other than normal wear and tear) caused to the property during the period of requisition, including the expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition.

(2A) The recurring payment, referred to in clause (a) of sub-section (2), in respect of any property shall, unless the property is sooner released from requisition under section 6 or acquired under section 7, be revised in accordance with the provisions of sub-section (2B)-

(a) in case where such property has been subject to requisition under this Act for the period of five years or a longer period immediately preceding the commencement of the Requisitioning and Acquisition of Immovable Property(Amendment) Act, 1975-

(i) first with effect from the date of such commencement, and

(ii) secondly with effect from the expiry of five years, thirdly with effect from the expiry of ten years, from such commencement;

(b) in a case where such property has been subject to requisition under this Act immediately before such commencement for a period shorter than five years and the maximum period within which such property shall, in accordance with the provisions of sub-section (1A) of section 6, be released from requisition or acquired, extends beyond five years from such commencement,-

(i) first with effect from the date of expiry of five years from the date on which possession of such property has been surrendered or delivered to, or taken by, the competent authority under section 4, and

(ii) secondly with effect from the date of expiry of five years, and thirdly with effect from the date of expiry of ten years, from the date on which the revision made under sub-clause (i) takes effect;

(c) in any other case.-

(i) first with effect from the date of expiry of five years from the date on which possession of such property has been surrendered or delivered to, or taken by, the competent authority under section 4, and

(ii) Secondly with effect from the date of expiry of five years, and thirdly with effect from the date of expiry of ten years, from the date on which the revision under sub-cl.(i) takes effect.

(2B) The recurring payment in respect of any property shall be revised by re-determining such payment in the manner and in accordance with the principles set out in sub-section (1) read with clause (a) of sub-section (2), as if such property had been requisitioned under this Act on the date with effect from which the revision has to be made under sub-section (2A).

(3) The compensation payable for the acquisition of any property under section 7 shall be the price which the requisitioned property would have fetched in open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition."

17. Section 8 envisages fixation of compensation by agreement or arbitrator appointed by the Central Government. Sub-clause (2) provides for compensation as recurring payment in respect of period of requisition. Thus, the core question, which arises for consideration is "***Whether sub-section (1) of Section 7 postulates obligatory on the part of the competent authority to give a personal hearing to the objector before issuing acquisition notice in Form J*** ?" In other words denial by the competent authority to grant a personal hearing would render the notification of acquisition of requisitioned property under Sub-section (1) of Section 7 illegal being in violation of principles of natural justice.

NATURAL JUSTICE:-

18. The basic principle of natural justice is that before adjudication starts the authority concerned should give to the affected party a notice of the case against him so that he may adequately defend himself. The natural justice merely imposes standard of procedural fairness on the decision making authority.

19. ***Wade*** in his Book on Administrative Law has observed that,

> "it is not possible to lay down rigid rules as to when the principles of natural justice are to apply; nor as to their scope and extent. Everything depends on the subject-matter, the application of principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."

20. Recently the Apex Court in Sohan Lal Gupta vs. Asha Devi Gupta reported in 2003(7) SCC 492 after noticing large number of decisions observed that,

> "The principles of natural justice, it is trite, cannot be put in a straight jacket formula. In a given case the party should not only be required to show that he did not have a proper notice resulting in violation of principles of natural justice but also to show that he

was seriously prejudiced thereby.

In Para 37 the Apex Court quoted with approval the observation of Calcutta High Court in Khaitan India Ltd. vs. Union of India (Cal LT 482) as follows:-

> "The concept of principles of natural justice has undergone a radical change. It is not in every case, that the High Courts would entertain a writ application only on the ground that violation of principles of natural justice has been alleged. The Apex Court in State Bank of Patiala v. S.K.Sharma has clearly held that a person complaining about the violation of the principles of natural justice must show causation of a prejudice against him by reason of such violation. The Apex Court has held that the principles of natural justice, may be said to have been violated which require an intervention when no hearing, no opportunity or not notice has been given. Reference in this connection may also be made to Managing Director, ECIL v. B.Karunakar. The question as to the effect of non-grant of enough opportunity to the learned counsel for the appellant by the Commission to meet the allegations made in the supplementary affidavit requires investigation. As to what extent the appellant has suffered prejudice would be a question which would fall for a decision of a higher court. Where such a disputed question arises, in the considered opinion of this Court, a writ application will not be entertained only because violation of natural justice has been alleged and more so, in a case of this nature where such a contention can also be raised before the highest court of India. A distinction has to be borne in mind between a forum of appeal which is presided by an administrative body and the Apex Court as an appellate court."

21. In Chairman, Board of Mining Examination and Chief Inspector of Mines vs. Ramjee reported in 1977(2) SCC page 256 the Court held that natural justice is no unruly horse, no

lurking land mine, nor a judicial cure-all. The Court further observed in Para 9 that,

> "if fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt – that is the conscience of the matter."

Thus, the principle of natural justice being not a straight jacket formula, has to be viewed with flexibility. It's application depends on facts and circumstances, relating to each particular situation. While object of the rule is to ensure that there would not be failure of justice, however, where public interest requires curtailing of rule, the court should balance that interest with the requirement of natural justice. It would be negation of justice, if an action is invalidated on mere technical violation of the principle.

ORAL HEARING:-

22. A further question arises, if the natural justice demands that a person affected should actually receive an oral hearing.

The Apex Court in A.K.Gopalan vs. State of Madras reported in AIR 1950(37) SC page 27 held that natural justice does not necessarily predicate an oral hearing unless the context require otherwise. It is the requirement of natural justice that the decision making authority does not make a decision adverse to the individual without giving him an effective opportunity of meeting relevant allegations against him.

23. In R vs. Sec. State Transport (1987), All E.R. 161 the court of appeal in a case of enhancement of toll charges over a bridge considered the provision providing public hearing before effecting increase, held that unless the prejudice is established to have resulted from procedural impropriety no interference was called for.

24. The Apex Court considering the sub-clause (3) of Article 217 of the Constitution of India in Union of India vs. Jyoti Prakash Mitter reported in AIR 1971 SC page 1093 held that it does ***not envisage a right of personal hearing***. The Court held as follows:-

> "In a proceeding of a judicial nature, the basic rules of natural justice must be followed. The respondent was on that account entitled to make a representation. **But it is not necessary an incident of the rules of natural justice that**

> **personal hearing must be given to a party likely to be affected by the order**."

25. It is significant to notice that wherever the legislator felt necessary to grant opportunity of personal hearing a specific provision is provided in the statute. Sub-section (2) of Section 5A of the Land Acquisition Act, 1894 provides for personal hearing. The provision reads as follows:-

> "(2) Every objection under sub-section (1) shall be made to the Collector, in writing, and the Collector shall give the objector an opportunity of **being heard in person** or by any person authorised by him **in this behalf or by pleader and shall, after hearing all such objections and after making such further enquiry**, if any, as he thinks necessary either make a report in respect of the land which has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of the Government. The decision of the appropriate Government on the objections shall be final."

26. It is evident that a specific provision has been provided by the legislature of opportunity of being heard in person or by a person authorised by him in this behalf or by the pleader. However, no such provision has been provided under sub-section (1) of Section 7 which reads as follows:-

> "Provided that before issuing such notice, the Central Government shall call upon the owner of, or any other person who in the opinion of the Central Government, may be interested in, such property to show cause why the property should not be

> acquired; and after considering the cause, if any, shown by any person interested in the property and after giving the **parties an opportunity of being heard**, the Central Government may pass such orders as it deems fit."

Thus, under the Act of 1952 the only requirement before issuing acquisition notice under sub-section (1) is to provide opportunity of being heard. This may be by way of filing objection or representation. It is well established rule that the application of natural justice has to be in conformity with scheme of the Act and subject matter of the case. It also depends upon the nature of enquiry. The scheme of Act of 1952, provides for acquisition of requisitioned land, only such land on which construction has been raised from the expenses of the Central Government as provided under Section 7(3). Obviously it being matter of record does not require personal hearing. The nature of enquiry is also limited. Thus, the legislature has not provided for oral hearing as provided under the Act of 1894. Sub-section (1) of Section 7 only contemplates **"opportunity being heard"**. Hearing can be by way of written representation or oral. It does not necessarily predicts oral hearing. Thus, we hold that sub-Section (1) of Section 7 of the Act of 1952 does not necessarily postulates personal hearing.

USELESS FORMALITY THEORY:-

27. In M.C.Mehta vs. Union of India reported in 1999(6) SCC page 237, the Apex Court considered the ***"theory of useless formality"***. It was observed in Para 22, as under:-

> "22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of 'real substance' or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed see *Malloch v. Aberdeen Corpn.* (per Lord Reid and Lord Wilberforce), *Glynn v. Keele University*, *Cinnamond v. British Airports Authority* and other cases where such a view has been held. The latest addition to this view is *R. v. Ealing Magistrates' Court, ex p Fannaran* (Admn LR at p. 358) [see de Smith, Suppl. p.89 (1998)] where Straughton, L.J. held that there must be *'demonstrable beyond doubt'* that the result would have been different. Lord Woolf in *Lloyd v. McMahon* has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in *Mccarthy v. Grant* however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is `real likelihood – not certainty – of prejudice'. On the other hand, *Garner's Administrative Law* (8th Edn., 1996, pp.271-72) says that slight proof that the result would have been different is sufficient. *On the other side of the argument*, we have apart from *Ridge v. Baldwin*, Megarry, J. in *John v. Rees* stating that there are always `open and shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J. has said that the `useless formality theory' is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that `convenience and justice are often not on speaking terms'. More recently, Lord

Bingham has deprecated the `useless formality theory' in *R. v. Chief Constable of the Thames Valley Police Forces, ex p Cotton* by giving six reasons. (See also his article `*Should Public Law Remedies be Discretionay?*' 1991 PL, p.64.) A detailed and emphatic criticism of the `*useless formality theory*' has been made much earlier in `Natural Justice, Substance or Shadow' by Prof. D.H.Clark of Canada (see 1975 PL, pp.27-63) contending that *Malloch* and *Glynn* were wrongly decided. Foulkes (*Administrative Law*, 8th Edn., 1996, p.323), Craig (*Administrative Law*, 3rd Edn., p.596) and others say that the court cannot prejudge what is to be decided by the decision-making authority, de Smith (5th Edn., 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (*Administrative Law*, 5th Edn., 1994, pp. 526-30) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a `real likelihood' of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their `*discretion*', refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in *State Bank of Patiala v. S.K.Sharma*, *Rajendra Singh v. State of M.P.* That even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of latter, it cannot be waived."

28. Recently, the Apex Court in Canara Bank vs. Debasis Das

reported in 2003(4) SCC page 557 has referred to ***"useless formality theory"***. The observation made in Para 27 has been quoted with approval by the Apex Court in Divisional Manager, Plantation Division, Andaman & Nicobar Islands vs. Munnu Barrick reported in 2005(2) SCC page 237, as follows:-

> "It is to be noted that at no stage the employee pleaded prejudice. Both learned Single Judge and the Division Bench proceeded on the basis that there was no compliance with the requirement of Regulation 6 (18) and, therefore, prejudice was caused. In view of the finding recorded supra that Regulation 6(1*) has not been correctly interpreted, the conclusions regarding prejudice are indefensible."

29. The principle of natural justice, it is well settled, must not be stretched too far. The party is required to show not only that it did not have a personal hearing resulting in violation of princple of natural justice, but also to show that it was seriously prejudiced thereby. It is held in M.C.Mehta vs. Union of India reported in 1996(6) SCC 237 that there can be certain situation in which orders passed in violation of principle of natural justice need not be set aside under Art.226 of the Constitution of India. Reference be also made to decision of the Apex Court in Aligargh Muslim University vs. Mansoor Ali reported in 2000(7) SCC page 529. In State Bank of Patiala vs. S.K.Sharma reported in 1996 (3) SCC 364, the Apex Court held that complaint of violation of principle of natural justice be examined from the point of view of

prejudice i.e. whether such violation has prejudiced the party affected in defending himself properly and effectively.

30. While considering the contention with respect to the violation of the principles of natural justice, we may also refer to the observation of Lord Denning in R. Vs. Secretary of State for Home Deptt. reported in 1974 QB page 313,

> "The rule of natural justice must not be stretched too far. Only too often the people, who had done wrong seek to invoke the rule of natural justice so as to avoid the consequences."

31. Thus, Apex Court in Mohindra Singh Gill vs. Chief Election Commissioner reported in AIR 1978 SC page 851 observed that a balance has to be maintained between the need of expedition and the need to give reasonable opportunity to a party to see material against him. The opportunity need not to be an ***elaborate ritual***.

Thus, if there is no surprise, if ample opportunity has been given, if party affected has made representation, no oral hearing is required. It would be a useless formality.

32. In the instant case also the respondent at no stage pleaded

prejudice. The subject property was requisitioned as back as in the year 1976. The possession was taken over on 1st July, 1976. Thereafter the area has been developed. It is stated that upto year 1988 the construction work of more than Rs.217 Crores was raised. The respondent on its own has given the land and received the compensation. The situation has become irreversible. Thus, by no stretch of imagination it can be said that after hearing the first respondent Trust the competent authority would discharge the notice of acquisition. Thus, to give personal hearing as directed by the learned Single Judge by the competent authority to respondent would be an empty formality, in other words ***"useless formality".***

FUTILE WRIT:-

33. The matter can be looked from another angle. The power under Article 226 is discretionary. It will be exercised only in furtherance of interest of justice and not merely on making out of legal point. It is observed by the Apex Court in Ramnik Lal vs. State reported in 1996(3) SCC 392 that the court must weigh the public interest vis-avis the private interest in exercising the power under Article 226. It is well established rule that the court in exercise of power under Article 226 would not issue futile writ. In S.L.Kapoor vs. Jagmohan reported in 1984 SCC

page 379 it has been held by the Apex Court that ***if on admitted or indisputable facts only one conclusion is possible the Court may not issue its writ to compel the observance of natural justice, not because it is necessary to observe natural justice but because the courts do not issue futile writs.***

34. In the instant case it is not in dispute that the respondent Trust gave a no objection for utilizing the subject land for the defence purposes. The land was requisitioned by the Central Government in accordance with the provisions of Section 23 of the Act of 1971. The land measuring 296.20 Acres comprising of Khasra No.426 vested with the Central Government on issue of notification under Section 23 of the Act of 1971 i.e. on 1.7.1976. On the request of the respondent Trust the matter for determination of compensation was referred to the arbitrator under Section 8(d) of the Act of 1952. Repeated representations have been made by the first respondent for payment of compensation. As regards utilization of the subject land as per the position existed in the year 1988 approximately Rs.217 Crores have been spent by the Central Government for the planned development of the cantonment. A new Corps Head Quarter Unit is located on the subject land. In these circumstances opportunity of giving personal hearing is simply

an empty formality to saddle the Central Government with a heavy financial burden which may run in crores by paying compensation at the rate of market value of the year 2005 instead of 1993 or earlier. In Managing Director ECIL reported in 1998(7) SCC page 84, The Apex Court cautioned that court should avoid resorting to short cut in machenically setting aside the order in the name of violation of principle of natural justice. It must be borne in mind keeping in view larger public interest, legal formalities cannot be divorced from the factual situation. Thus, we are of the view that denial by the competent authority to grant a personal hearing to the respondent Trust does not render the orders Annexures 12 & 13 illegal. The learned Single Judge has committed grave error in issuing a futile writ setting aside the orders Annexures 12 & 13 in exercise of powers under Article 226 of the Constitution of India.

SPEAKING ORDER:-

35. The learned Single Judge has quashed the Annexure-12 having held that it also suffers from the vice of being non-speaking. In other words the final order of acquisition Annexure-12 does not contain reasons. On fair reading of the impugned order Annexure-12, we are of the view that the learned Single Judge was not correct in saying so. The competent authority (the

Collector) considering the objections held that the land under acquisition was requisitioned under Section 23 of the Act of 1971. The possession of the land was taken over by the Central Government w.e.f. 1st July, 1976 in accordance with the provisions of Section 23 of the Act of 1971. The land under acquisition during the period of requisition has been fully developed by raising number of constructions at the expenses of the Central Government. The objector was in full knowledge of the public purpose for which the land was sought to be acquired right from the beginning. The objector has received recurring compensation of Rs.1,97,12,110/-. The authority also noticed that there was some litigation with respect to the subject Trust properties in which the Ministry of Defence was also a party and the same culminated with the decision of the Supreme Court. The conclusion arrived at by the competent authority in the facts and circumstances cannot be said to be unreasonable. The learned Single Judge has committed manifest error in considering the impugned order Annexure-12 as a non-speaking order. The inevitable result is that judgment of the learned Single Judge has to be set aside.

36. Consequently, both the special appeals are allowed. The order of the learned Single Judge dated 25th February, 2003 is set aside. The writ petition filed by the first respondent is

dismissed with cost, which is assessed to as Rs.10,000/-.

(MANAK MOHTA) J. **(N.N.MATHUR) J.**

BKS/-